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MONEY BOX LIVE

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LEWIS: Hello. Well we all like shopping, I suppose - buying things online or in real shops that you have to walk to - but when we get the stuff home or it's delivered to the front door disappointment sometimes follows. Those trousers don't quite fit as well as they should, the colour looks different in the cold light of your own home, or the curtains you ordered have been cut slightly wrong, or that repair to your car didn't last as it should, or something is perhaps not quite as it was advertised when it's delivered or it doesn't even arrive at all. So what are your rights as a consumer when things are not quite right or disappointing or go wrong? Today we're taking your questions on consumer rights. Emails have been coming in steadily. Our website: bbc.co.uk/moneybox. But if you've been frustrated by faulty goods, poor service or hidden charges or you want to know about refunds or returns or how to handle a dispute, you can call now - 03700 100 444. With me today to answer your questions, Laura Fergusson is from the UK European Consumer Centre where she's a consumer adviser; Martyn Hocking is Editor of the consumer magazine Which?; and in our Cardiff studio is David Sanders from the Trading Standards Institute where he's its lead officer on civil law. Our first question is from Alfreda from Cardiff. Alfreda, your question?

ALFREDA: Hello, I'm one of the people who's had a few anxious days having bought a Beko fridge freezer from my local Iceland store and discovering that the serial number was one of the ones listed by Beko on its website.

LEWIS: These are the ones that are likely to cause a fire or at least in some, a few cases have caused a fire.

ALFREDA: Yes. I couldn't get through on the helpline like many, many other people, so it suddenly dawned on me that I might have some redress from Iceland where I bought it. So I phoned them and, forgive the pun, I got a rather frosty reaction. *(laughs)*

LEWIS: We don't mind puns on this programme.

ALFREDA: Which was really "well all we can do is refer you back to the helpline."

LEWIS: Yes, so you're thinking as a retailer is Iceland responsible?

ALFREDA: Yes.

LEWIS: Let's put that to our guests. Laura Fergusson?

FERGUSSON: Well if you have received a product that is defective, then Iceland will carry some liability as a retailer under the Sale of Goods Act. I think the difficulty that we have is that you have a potentially defective item rather than an actually defective item, so your rights against the retailer may be slightly limited.

LEWIS: And of course it may ... How long ago did you buy the fridge freezer?

ALFREDA: It was in 2007. But I do understand that under the Sale of Goods Act there is a 6 year window, and Comet have taken their responsibility seriously and are dealing directly with the customer.

LEWIS: Right, okay. Well we can't obviously put this to Iceland, but let's just find out about general rights. David Sanders from Trading Standards Institute.

SANDERS: Well I'm glad you pointed out you're aware of the 6 year cut-off point on the Sale of Goods Act. Yes Laura's absolutely right, there is a potential defect, and the firm have said that they will rectify these potential defects so the goods don't actually become faulty. Because Iceland may be partly correct in saying we're not going to do anything at this point in time because the goods aren't showing a fault at this time, and they wouldn't have to do something until they were faulty.

LEWIS: Difficult to know what to do though, isn't it, if your fridge freezer might burst into flames? I mean do you turn it off and not use it until Beko get round to using it? Martyn Hocking?

HOCKING: The numbers don't look great because I think Beko have said something like half a million products were sold between I think it's year 2000 and 2006 they think are the years when the products were made which are potentially faulty, and so far they've only got round to repairing something like 10,000 or 11,000. So whilst they've put their hand up now and said yes we will come out and visit everybody and make a repair, it begs the question how long will it take to get round to all of those customers? And, as you say, are you prepared to go off to work in the morning and leave the thing plugged in?

LEWIS: Let's go back to your right against the retailer - Iceland in this case. And Laura and David, you both mentioned a 6 year window. I'd always thought things had to go wrong within a year to take them back. Laura?

FERGUSSON: No usually the guarantee period or warranty period - that's a voluntary thing offered by the manufacturer - is normally for one year if one is offered. However, under British legislation the Statute of Limitations or the Limitations Act actually allows you a maximum of 6 years in which to bring a case to court.

LEWIS: Right, so you'd have to go to court if you wanted to. And what can you do ... I mean obviously, Alfreda, you've contacted Iceland and they've just said nothing to do with us, contact Beko, and you haven't been able to get in touch with Beko, the

manufacturer.

ALFREDA: Well I have now and I discovered that our appliance was actually at the end of the worrying period. But I'm really thinking about other people ...

LEWIS: Right.

ALFREDA: ... and I'm also wondering who would be liable if there was another horrible incident involving injury in the period when these machines are not being dealt with?

LEWIS: Sure, so you're thinking of you've tried to do what you can - you've been in touch with the shop, you've been in touch with the manufacturer. Nobody's come out to mend it. You've left it on because you've got all your frozen stuff in it and then it bursts into flame and causes damage. Who is liable? Any takers on that? David?

SANDERS: It broadens out in that you know we're talking about contractual rights. But if somebody was injured by this product, then there's a whole chain of people who are brought in because if it was a fire or something like that then it could be the retailer, it could be the manufacturer. Anybody in that supply chain for injury, personal injury, could be liable for compensating.

LEWIS: And what about the shop? I mean this was the specific question. If the retailer that you bought it from just says nothing to do with us, what can you do Laura?

FERGUSSON: Well at the situation where the goods are not definitely defective, you are going to find it very difficult to bring in a case against the retailer.

LEWIS: Okay, well there's more information on the Beko website and I do suggest anyone in that rather worrying position that Alfreda described should definitely try and contact Beko and try and get it sorted out. But turning it off until it's mended is a

bit of a big decision, I think, isn't it? Thanks very much for your call, Alfreda. Janet is calling now from Gwent. Janet?

JANET: Hello. About a year ago I bought four leather belts from ... Is it alright to say the name of where I bought them from?

LEWIS: Yes, tell us where you bought them from.

JANET: Cotton Traders.

LEWIS: Okay.

JANET: I bought them from a catalogue and I had two for myself and two for my son. The ones my son had though just more or less disintegrated you know across where they used to buckle up. And on the catalogue they said that they were quality leather and I would think myself that a leather belt should last more than a year.

LEWIS: And they definitely were leather, were they? You were happy they were leather?

JANET: Well there's a strip of leather and it's about a bit thicker than a sheet of paper.

LEWIS: Right, okay, so that's quite thin for a belt. Laura?

FERGUSON: It's difficult to know how long you reasonably expect a belt to last - you know how many times you wear it, how much force you use when you're doing the buckle up. As the product has become faulty outside of the first 6 months, the burden of proof is on you as a consumer to actually prove that this product was sub-standard in some way.

LEWIS: So just explain that difference before and after 6 months.

FERGUSSON: Okay. Well within the first 6 months of purchase, the law states that if an item becomes faulty, it's actually inherently faulty; so it was faulty at the time of sale and the burden of proof is actually in the retailer to prove that it wasn't faulty when they bought it, or sorry when you bought it. Outside of that first 6 months of purchase, the burden of proof is reversed because it's less likely to be potentially an inherent fault and possibly a wear and tear related issue.

LEWIS: Right. And after a year has passed, does anything change there?

FERGUSSON: Well you still have, due to the Statute of Limitations, up to 6 years. However there is an idea of how long is a product reasonably expected to last with general use.

LEWIS: Yes, I see.

SANDERS: None of these time limits for taking actions actually imply there's a durability standard that the product will last a certain length of time. What the product should be is up to the manufacturer's set standard - i.e. it's not defective as compared with the rest of the standard. So if you make a belt and all the belts are only designed to last a year and it lasts a year, then it might be very, very difficult getting any compensation when it fails.

LEWIS: But the word 'quality' was used in the description. Doesn't that imply slightly longer than average lasting? I don't know.

SANDERS: It probably depends on the price paid for the goods, doesn't it?

JANET: Well they were £16 each they were.

LEWIS: Right. Well it sounds as if you've got a bit of a struggle, Janet. I certainly sympathise with you. If you bought something out of leather, you don't expect it to go wrong or at least to wear out that quickly.

JANET: Well in the past my husband has bought belts and the worst thing that happened to them, they stretched, and they've been 20 years. You know what I mean? So I would have thought that a belt would sort of last longer than a year.

LEWIS: Right and you've written to the catalogue company, have you?

JANET: Well I phoned them, I did, and they were more or less wiped their hands of it.

LEWIS: I would put it in writing and I often find writing to the person in charge, the chief executive or the managing director works very well. Make a proper complaint. Say you think the quality of a leather belt should last longer than however long it lasted and send it to the chief executive and see what happens. I think that's probably your best bet. Your legal rights may not be quite that strong in this case, but thanks very much for your call. I'm not supposed to be giving advice. Everybody's nodding.
(laughter)

HOCKING: It sounds very reasonable to me.

LEWIS: I always find writing or even faxing the chief executive works wonders sometimes. Thanks for your call, Janet. Mark is calling us now from Battersea. What's your question, Mark?

MARK: Ah hello there. I'm phoning in reference to a computer course which I undertook about ... well it was at the end of March. I paid £2,000 for it. We did a month and a half in-house and then it was announced that we were going to transfer the classes to at home, so they told us to go home and wait 2 weeks and we'd get the kits. And nothing happened. Eventually texted us and said we've got other things on the go. It'll be a couple of months, we'll let you know. And two months has now gone and nothing's heard. I just wonder where I stood on the whole matter.

LEWIS: Sounds like bad news to me. David Sanders?

SANDERS: I think it does sound like bad news. I definitely think there's a case for getting compensation there for failing to deliver the programme you signed up for. However it does sound as if there may be some financial difficulties with the firm involved and you know it is unfortunate you may win a case and still not get the money that you have been promised.

HOCKING: It does sound as though your first step needs to be to go back to the company and ask for your money back.

MARK: Yeah I can't ... That's one thing I didn't mention. They've moved out of those offices. They were probably only leasing them for a short while. The phone number is on a permanent answer phone, the text number just sends back a standard text to prospective students to say this is the amount you'll earn - blah-blah-blah, etcetera - and then nothing heard from any person.

LEWIS: Mark, how did you pay?

MARK: I paid by debit card.

LEWIS: Right and which sort of debit card?

MARK: A Visa debit card.

LEWIS: Laura, is there a scope for a charge back on the Visa debit card?

FERGUSON: Certainly I would advise that you want to be contacting your bank and asking them for information about their charge back procedure and how you go through their procedure in order to reclaim this money. But the banks do have mainly ... most banks have procedures in place, and if you have any difficulties then you can turn to somebody like the Financial Ombudsman for support on that process.

LEWIS: And if it was a credit card, it would be easier, wouldn't it?

FERGUSSON: It would indeed, under Section 75 of the Consumer Credit Act.

LEWIS: But you can do it with a Visa debit card, but not with the Mastercard version of the debit card. That's more difficult.

FERGUSSON: It's definitely a Visa initiative.

MARK: Right, that's fine, I'm Visa.

LEWIS: And you'd have to find some kind of way of establishing that this company really wasn't going to provide the service they promised.

MARK: Yeah, exactly, I will go through the whole process. I'm in touch with the consumer ...

LEWIS: Okay ...

MARK: Sorry. Just that I'm in touch with the Consumer Credit Council at the moment and they advised me to send a letter registered post to see where they are basically. Anyway ...

LEWIS: And then go to your bank.

MARK: Yeah I'll do that. Thanks very much.

LEWIS: And Laura, just very briefly, how long would it take to get your money back? It would be a little process, I imagine.

FERGUSSON: It can vary depending on the banks and how quickly they like to respond, but they are supposed to certainly ... If you request a final response from them, they're supposed to issue that within 8 weeks.

LEWIS: Right and then of course you can go to the Financial Ombudsman Service ...

FERGUSSON: You can.

LEWIS: ... because then you're dealing with a bank rather than a college. Okay. I'll take a couple of emails now. Suzanne's emailed from Manchester. She paid a £1300 deposit for wooden flooring. She paid with a debit card. Promised to deliver from the shop, but it kept changing. Then she said she wanted to cancel and get her money back. The shop said it would have to do a charge back, which is what we've just been talking about. She put the forms in and has heard nothing. Were the shop right? Well again it sounds a bit there, Martyn Hocking, as if the shop's done a runner in this case?

HOCKING: Absolutely. And I suppose that comes down to then whether the shop is still trading and whether it's therefore worth taking them to court to get the money back or whether you're in reality trying to sue a business that no longer exists.

LEWIS: Yes. Or of course try and go to your bank if it was a Visa debit card or a credit card and get it back from the financial services.

HOCKING: Yeah, I think Maestro also is part of the charge back scheme.

LEWIS: Maestro do that as well, do they?

HOCKING: Yeah.

LEWIS: Yes, but ultimately I suppose if you can't do that, I mean if you'd paid cash then you'd have to go to court, small claims court?

HOCKING: Absolutely.

LEWIS: Yeah, okay. Right another email. That was an email from Suzanne as I said in Manchester. Thanks for that. And this is from Mary. I'll call her Mary. 'I bought a barbecue grill from a reputable store and found the design is faulty. Charcoal kept dropping through the bottom grill. It's too far apart. But I didn't assemble it till 2 months after I purchased it last spring. It's the shop's own brand. What are my rights for receiving a full refund? I don't have a receipt.' Is that a problem, David Sanders?

SANDERS: It's particularly awkward. It could be a problem not having the receipt. She only needs proof of purchase, not actually a receipt. And it's within 6 months purchase and she's asking for a refund, which would be a right and there would be a presumption the goods were faulty within that 6 month period ... Sorry, no she can have a repair or replacement without proving fault. If she actually wants a refund, she may have to prove the goods are faulty and some proof of purchase.

LEWIS: This sounds a bit like faulty design really because she says the charcoal dropped through the bottom grill. I mean that would be a fault to me, but it's more how it was made, Laura, than something gone wrong with it.

FERGUSSON: It is. But when we talk about faults with goods, it doesn't necessarily have to be something breaking or something being damaged in some way. There's also this idea of something being fit for purpose, which is fit for its own purpose, the purpose it was designed for. It sounds like in this instance that maybe this product wasn't quite fit for its purpose and therefore that would still be a breach of contract and give a buyer rights.

HOCKING: And it is worth emphasising that point about you don't need to have the receipt. Obviously if you've got a receipt note, that's going to make the conversation a lot easier, but the reality is if you've got a credit card statement or a bank statement which indicates the price paid, that should be perfectly good enough.

LEWIS: Sure. And this was their own brand, so you had to have bought it there, so that's even easier.

HOCKING: Absolutely.

LEWIS: Another email on slightly different lines from Alex Smith who says, 'Please tell your listeners they are not entitled to their money back just because they've changed their mind.' She says she's a small retailer and she gets really annoyed when customers bring things back and claim they have a legal right to a refund just because they don't like it. Martin?

HOCKING: Yeah, absolutely. The irony is if a shop has got a returns policy, which bigger stores will definitely have, they are honour bound to follow that policy. If a shop doesn't have a written returns policy, no it's very much at the discretion of the retailer.

LEWIS: And that's why big shops will often allow you to change things, but not give you money back. But if it's faulty of course you do. If you've just changed your mind, then you can't do that, you can't get your money back except when the shop wants to give it you. Marian is calling us now from Wotton-under-Edge. Marion, you've been very patient. What's your question?

MARION: Hello. I bought an Epsom Perfection scanner on 4th January. After I'd received ... I'd spoken to the sales people at Epsom on four or five different occasions and for no particular breakdown I'd written down the dates and the names of the people and the advice I'd got. And when it arrived, I bought it on the condition that it was compatible with Windows 7, I could edit scanned documents and scan pages of thick books. They were the sort of three requirements and that's why I asked sales people for advice because I couldn't view the thing, any of them in the shops. Anyway it arrived and I couldn't download the software that came with it. Only the software that would make the scanner scan, but none of the other software to do with the OCR editing, and it wouldn't scan thick books without big black borders going round on the edge of the pages. So I rang the technical helpline and they didn't know how to advise me and they told me that I would receive a phone call back, which I didn't. And then towards the end of January, I rang and just said to the ... I asked to speak to the manager and I said, "I'd like a refund." And he assured me over the

phone that they would be able to talk me through it working properly. I was about to go away, so I agreed for him to ring back when I got back from holiday. And after quite a lot of time on the phone, they were quite good and talked me through lots of things, and they discovered that the software wouldn't download ...

LEWIS: (*over*) Marion, can I just ask you to get to the final point because we've got other people waiting.

MARION: Yes. Well I wrote to the MD and said I would like my money back because it didn't, wouldn't, I couldn't edit the software.

LEWIS: It didn't do specifically what you'd asked for.

MARION: No. And I received a letter back to say that the scanner was fully compatible with my Windows 7 and the fact that the third party bundle software wasn't compatible, that wasn't a requirement of scanner operation.

LEWIS: Okay, let's put that to Laura Fergusson first. I mean, Laura, Marion explained very clearly what she wanted and she didn't get it. Does that give her stronger rights?

FERGUSSON: Yes, I think so. I mean we've just spoken about goods being fit for their purpose, for the purpose they're intended for, whereas this I think is fit for a purpose made known to the seller. You're purchasing a good to do a particular job and you've asked for the seller and relied on their skill and expertise. I don't really think that they've fulfilled that requirement of them because the goods simply aren't fit for your purpose, so I do think they should be advised to replace the product with something that is going to be more suitable for you.

LEWIS: Or refund your money?

FERGUSSON: Or possibly refund your money. Certainly the first remedy is repair

or replacement.

LEWIS: Right, yeah. David Sanders, I mean we're in a situation we often are on Money Box Live. We explain very clearly what people's rights are. I think Marion's tried to get her rights for some time on this. How can she enforce what we believe her rights to be and what she obviously does too?

SANDERS: Ultimately she would have to use the small claims procedure in the county court, but you know one thing that is really going for her is she made careful notes and it is very important if you're buying a technical piece of equipment to know exactly what you wanted to do and specify that because it does increase your chances of getting compensation when it doesn't do that. And I think this is one of the cases where you probably wouldn't want a repair or replacement because it's still only going to not do what you don't want it to do.

LEWIS: Yes and of course long further phone calls to try and get software to work, which clearly isn't doing what she wanted it to.

SANDERS: Yes.

LEWIS: So should she write a sort of final letter now back to the managing director - she's obviously in touch with the person - and say look that's it, I've had enough, it isn't fit for the purpose. I was very specific about it. I want my money back or I'll take you to the small claims court.

SANDERS: Absolutely.

LEWIS: Is that the kind of approach to take here?

SANDERS: I would recommend that approach.

LEWIS: So quite a tough letter setting all that out. And if you don't get satisfaction,

then following it up by a small claims. Now just one of you explain to me about the small claims court because people find going to court very frightening, but now, what I recall, you can do it online, can't you? Laura?

FERGUSSON: Yes you can take legal proceedings online via the Money Claim website. Certain information is available from the local courts and also from the Ministry of Justice and the Courts and Tribunal Service website. So it's very simple. You can go online. You submit what your claim is, who you're claiming against in all of your documents, and the courts then deal with dealing with the defendant.

LEWIS: You have to pay though, don't you?

FERGUSSON: You do have to pay. The courts will be able to give you a schedule of costs. The costs are increasing as the amount of the claim increases, so you can make a maximum claim of £5,000 in the small claims court.

LEWIS: Right. And of course in Marion's case, I'm sure the scanner was a lot less than that and she can perhaps claim a few expenses as well. Marion clearly is online by the nature of the goods she's purchased. What if you're not online, Martyn? What can you do about small claims then? Much more difficult, I imagine?

HOCKING: Yeah, much more so. I mean the assumption now is that you are working online.

LEWIS: (*over*) You are online.

FERGUSSON: The courts are really flexible, so obviously you can go into the courts and they'll quite happily give you the paperwork.

HOCKING: What your local county court?

FERGUSSON: Your local county court. Go in and see them They'll happily give

you the paperwork and you know quite happily take your money from you as well. And I'm sure if you phone up your local county court, they'll be able to send something out to you.

LEWIS: Don't be afraid of the courts because ... (*Sanders talks over*) Sorry, David?

SANDERS: If you have any difficulty in filling the form in that you've got from the county court (because they're not always that willing to help you with the technical side of it) then there's the CAB, there's Trading Standards, there's Laura herself. There are plenty of organisations who will help you with that claim.

LEWIS: You can always ring Laura, yes.

HOCKING: One other point I would make there is that if I was Marion, I'd probably take a sort of dual track approach and go back one more time to Epsom and say, "I am going to take you to the small claims court unless you can provide me with an alternative product" because at the end of the day she still wants a scanner, but she wants a different model because the one she's been supplied with clearly doesn't work.

LEWIS: And I imagine by now she wants one fairly quickly. Marion, thank you very much for your call. Interesting issues raised. I'm just going to do a quick email because it raises some slightly different issues. This is from Louise. Her mum recently purchased four tickets she says to a concert and then she made non-refundable hotel bookings and arranged annual leave to go to the concert and was then told just two weeks before that the date has been moved for various reasons. And of course she's rather stuck. She can still get tickets for the concert, but she can't change her hotel or indeed her leave arrangements. Where does she stand legally with liability against the concert organisers? That's a slightly tricky one.

FERGUSSON: Well if the concert organiser's not actually going to provide the concert on the agreed date, then potentially they're going to be in breach of contract if they're moving it and you're unable to attend the new date. It may also be reasonable

for them to cover some consequential losses, although it can be very difficult to get organisers to do this. As you can imagine, they're dealing with possibly thousands and thousands of people.

LEWIS: So a stiff letter to the concert organisers?

FERGUSSON: Certainly.

SANDERS: This is one of those areas where if there's any paperwork, you've got to really watch the small print because some people try to protect themselves from eventualities like having to change dates and things like that which limits your liability.

LEWIS: Yes, I suppose it depends on the reason, which is explained here, but I won't read it out because it's quite long. But anyway try, Louise. Try very hard against the organisers and see what you can get is our advice. We'll go to our next call who's again been waiting patiently. Alma's calling from Dulwich. Alma, your question?

ALMA: It's about the meaning of the word 'upgrade'. I have a mobile telephone which I have on a monthly system. I pay monthly. And I've had a recent contract for nearly 2 years and I was told by various calls that I could now get an upgrade for my next contract. I went to one of the network shops, I didn't do it online. And I admit I was in a hurry - I only specified one thing that I particularly liked about my old phone that I'd like with the new phone, which was it had a very clear keypad, nice big large figures. When I got it back to my office, I found that it in fact was an extremely simple phone - described on the internet, which I looked at, as a great basic mobile for the elderly and those who are less tech inclined and for those who are hard of hearing. Now I don't think I ...

LEWIS: None of those apply to you.

ALMA: Absolutely. And the thing was that it's been described as an upgrade. I

complained about it. The letter back from the network said 'we deem your acceptance of a new phone along with the fixed term agreement as an upgrade'.

LEWIS: Okay and you're saying it really was a downgrade rather than an upgrade. Yes, okay.

ALMA: *(over)* It was a downgrade and they're refusing to do anything about it.

LEWIS: Alma, we're a bit short of time, so let me put that to the panel. David - upgrade, can it be a downgrade?

SANDERS: No, I think that's a misleading commercial practice and I think that's something Trading Standards might want to investigate. But it does give her right to compensation because she's been misled and the product isn't an upgrade.

LEWIS: Right, so what should she do Laura?

FERGUSSON: Certainly write to the company. I mean whenever you have a consumer complaint, it's always best to put something in writing to the company for potentially future use if you need it and also it's a good record of the handling of your complaint, and ask them to actually accept back the mobile phone and give you the option to obtain something that is actually an upgrade.

LEWIS: And just say it wasn't as you asked for and as described. So again we're into the rather strong letter territory I think, Alma, and if you don't get satisfaction write to the managing director. And if all else fails, can you go to court over that? It would be a bit difficult, wouldn't it?

FERGUSSON: You can. I mean potentially you can go to court over anything. However whether you win or not is down to the judge.

LEWIS: Okay, well thanks very much for that and thanks for your call, Alma. I'm

afraid that is all we have time for, so I'm going to say thank you to Laura Fergusson from UK European Consumer Centre, Martyn Hocking from Which? and David Sanders from Trading Standards Institute. Thanks for all your calls and emails. They're still pouring in, I'm afraid. You can find out more from our website: bbc.co.uk/moneybox. Listen again, download things, subscribe, sign up to the newsletter and read a transcript in a couple of days. Money Box Live is off the air over the summer. Returns on 31st August with Vincent Duggleby. There's a date for your diary. I'm back at noon on Saturday with a special Money Box on housing and I'm on my twitter, [Paullewis money](#), whenever I'm awake.